

**REMARKS**

The Office Action dated May 5, 2004 presents the examination of claims 3, 12-14, and 33. Claims 1-2, 4-11, 15-32, and 34-35 are withdrawn from consideration. Claims 13 and 14 are canceled without prejudice or disclaimer of the subject matter recited therein. Claims 3, 12, and 33 are amended. Support for the term "enzymatic" inserted into claim 33 is found in the specification, such as on page 11, lines 4-6, which recites "kinase enzymatic activity." No new matter is inserted into the application.

***Restriction Requirement***

The Examiner maintains the Restriction Requirement such that claims 1-2, 4-11, 15-32, and 34-35 are withdrawn from consideration. On page 2 of the Office Action, the Examiner indicates that claims "12-14, in part, 3, and 33" are considered on their merits. Applicants note, however, that the Disposition of the Claims on page 1 of the Office Action does not list claim 33 as either withdrawn from consideration or rejected/objected to. The Examiner is respectfully requested to clarify the status of claim 33 on the record.

***Objection to the Specification***

The Examiner objects to the specification for failing to cross-reference the documents to which the present application claims priority. In response to the Examiner's remarks, the specification is amended to recite that the present application

Application No. 09/771,161  
is a Continuation-In-Part of co-pending Application No. 09/724,676, filed on November 28, 2000, and for which priority is claimed under 35 U.S.C. § 120; and that the present application claims priority of Application Nos. 135619 and 136776 filed in Israel on April 12, 2000 and June 15, 2000, respectively, under 35 U.S.C. § 119. The entire contents of these priority documents have been incorporated by reference into the present application. The instant objection is therefore overcome.

***Objections to the Claims***

The Examiner objects to claims 3, 12-14, and 33 for various informalities. Claims 13 and 14 are canceled, thus rendering objection thereof moot. Applicants respectfully traverse the objection applied to the pending claims. Reconsideration and withdrawal of the instant objection are respectfully requested.

Applicants respectfully submit that the claims, as amended, fully address and overcome the objections of record. Withdrawal of the instant objection is therefore respectfully requested.

***Rejection under 35 U.S.C. § 112, second paragraph***

The Examiner rejects claims 3, 12-14, and 33 under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. Claims 13 and 14 are canceled, thus rendering rejection thereof moot. Applicants respectfully traverse the rejection applied to the pending claims. Reconsideration and withdrawal of the instant rejection are respectfully requested.

Claim 3

The Examiner asserts that claim 3 is indefinite and confusing. Claim 3, as amended, is directed to an amino acid sequence selected from the group consisting of (i) an amino acid sequence encoded by the isolated nucleic acid sequence of SEQ ID NO: 2, and (ii) an amino acid sequence of SEQ ID NO: 93.

Claim 33

The Examiner asserts that the phrase "kinase activity" in claim 33 is indefinite, and states that for purposes of examination, it is assumed that the phrase refers to kinase enzymatic activity or any biochemical or cellular process that is stimulated by a kinase. Claim 33 is amended to recite "kinase enzymatic activity" in order to confirm the Examiner's interpretation that said phrase would be understood by those skilled in the art to mean kinase enzymatic activity or any biochemical or cellular process that is stimulated by a kinase.

Applicants respectfully submit that the pending claims, as amended, particularly point out and distinctly claim the subject matter of the present invention, such that all claims comply with 35 U.S.C. § 112, second paragraph. Withdrawal of the instant rejection is therefore respectfully requested.

***Rejection under 35 U.S.C. § 112, first paragraph***

*Enablement*

The Examiner rejects claims 3, 12-14, and 33 under 35 U.S.C. § 112, first paragraph, for allegedly not being enabled by the specification. Claims 13 and 14 are canceled, thus rendering rejection thereof moot. Applicants respectfully traverse the rejection applied to the pending claims. Reconsideration and withdrawal of the instant rejection are respectfully requested.

The Examiner asserts that the specification is enabling for use of the polypeptide of SEQ ID NO: 93, but does not reasonably provide enablement for using any polypeptide encoded by SEQ ID NO: 2 or variants or fragments thereof or the polypeptide of SEQ ID NO: 93 or any variants or fragments thereof.

In order to place the present application into condition for allowance, but not to acquiesce to the Examiner's position, claim 3 is amended to recite an amino acid sequence selected from the group consisting of (i) an amino acid sequence encoded by the isolated nucleic acid sequence of SEQ ID NO: 2, and (ii) an amino acid sequence of SEQ ID NO: 93. Applicants point out that SEQ ID NO: 2 is a nucleic acid sequence which encodes the amino acid sequence of SEQ ID NO: 93.

As noted in Table 1, SEQ ID NO: 2 is a dominant negative kinase variant (Accession no. AF027706) of the serine/threonine kinase RICK (also known as RIP2) which has been shown to regulate apoptosis induced by the CD95/Fas receptor pathway. See, Inohara et al. *J. Biol. Chem.* 273(20):12296-12300 (1998), of record.

Thus, the skilled artisan could readily make and use an amino acid sequence encoded by SEQ ID NO: 2 and the amino acid sequence of SEQ ID NO: 93 given the disclosure of the instant specification, as well as knowledge in the art.

Applicants respectfully submit that the pending claims recite subject matter which is enabled by the instant specification, such that all claims comply with 35 U.S.C. § 112, first paragraph. Withdrawal of the instant rejection is therefore respectfully requested.

Written Description

The Examiner rejects claims 3, 12-14, and 33 under 35 U.S.C. § 112, first paragraph, for allegedly not being described in the specification. Claims 13 and 14 are canceled, thus rendering rejection thereof moot. Applicants respectfully traverse the rejection applied to the pending claims. Reconsideration and withdrawal of the instant rejection are respectfully requested.

With regard to claims 3, 12-14, and 33, the Examiner asserts that the specification does not provide adequate support for a genus of polypeptides including the polypeptide encoded by SEQ ID NO: 2 or variants or fragments thereof or the polypeptide of SEQ ID NO: 93 or any variants or fragments thereof.

In order to place the present application into condition for allowance, but not to acquiesce to the Examiner's position, claim 3 is amended to recite an amino acid sequence selected from the group consisting of (i) an amino acid sequence encoded by the

isolated nucleic acid sequence of SEQ ID NO: 2, and (ii) an amino acid sequence of SEQ ID NO: 93.

Support for SEQ ID NO: 2 and SEQ ID NO: 93 is found in Table 1 of the specification. As described therein, SEQ ID NO: 2 is a dominant negative kinase variant (Accession no. AF027706) of the serine/threonine kinase RICK (also known as RIP2) which has been shown to regulate apoptosis induced by the CD95/Fas receptor pathway. See, Inohara et al. *J. Biol. Chem.* 273(20):12296-12300 (1998), of record. Thus, these sequences are well supported by the specification.

With regard to claims 13, 14, and 33, the Examiner asserts that the specification does not provide adequate support for a genus of protein molecules which can treat any disease (claim 13) or inhibit any kinase (claim 14). As noted above, claims 13 and 14 are canceled, thus rendering the rejection based upon this issue moot. Applicants believe that claim 33 was inadvertently included in this rejection because (1) the Examiner fails to address in the body of the remarks why claim 33 is particularly rejected, and (2) claim 33 is not dependent upon either claim 13 or 14. In any event, Applicants respectfully submit that the subject matter of claim 33 is supported by the specification.

Accordingly, the pending claims recite subject matter which is described in the instant specification, such that all claims comply with 35 U.S.C. § 112, first paragraph. Withdrawal of the instant rejection is therefore respectfully requested.

**Rejection under 35 U.S.C. § 102**

The Examiner rejects claims 3, 12-14, and 33 under 35 U.S.C. § 102(b) for allegedly being anticipated by Wallach et al. (WO 98/55507), Bertin et al. (WO 99/40102), or Inohara et al., *J. Biol. Chem.*, 273(20):12296-12300 (1998). Claims 13 and 14 are canceled, thus rendering rejection thereof moot. Applicants respectfully traverse the rejection applied to the pending claims. Reconsideration and withdrawal of the instant rejection are respectfully requested.

Applicants respectfully submit that none of the cited references disclose the amino acid sequence of SEQ ID NO: 93, or the polypeptide encoded by the nucleic acid sequence of SEQ ID NO: 2. Wallach et al., Bertin et al. and Inohara et al. merely disclose partial peptide fragments. Local similarity is not sufficient to render the present invention anticipated or obvious, since as even argued by the Examiner with regard to homology and enablement, many changes in the amino acid sequence would be required to go from the locally similar proteins described in the references to the proteins of the present invention.

Thus, the subject matter recited in the pending claims is clearly novel and non-obvious over the cited references. Withdrawal of the instant rejection is therefore respectfully requested.

**Conclusion**


Applicants respectfully submit that the above remarks and/or amendments fully address and overcome the outstanding rejections and objections. For the foregoing reasons, Applicants respectfully request the Examiner to withdraw all of the outstanding rejections and objections, and to issue a Notice of Allowance indicating the patentability of the present claims. Early and favorable action of the merits of the present application is thereby respectfully requested.

Pursuant to the provisions of 37 C.F.R. §§ 1.17 and 1.136(a), the Applicants hereby petition for an extension of three (3) months to November 5, 2004, in which to file a reply to the Office Action. The required fee of \$490.00 is enclosed herewith.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
Marc S. Weiner, #32,181

*KLR*  
MSW/KLR  
2786-0239P

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000